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In the Supreme Court of the United States

October Term, 1979

NOEL CHANDLER AND ROBERT GRANGER,
Appellants,

vs.

STATE OF FLORIDA,
Appellee.

BRIEF OF AMICI CURIAE, FLORIDA NEWS INTERESTS ON DEVELOPMENT AND OPERATION OF FLORIDA RULE

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INTEREST OF THE AMICI CURIAE

This brief is filed by the Florida amici, media interests in Florida familiar with the development and operation of the Florida Rule allowing access to cameras and means of electronic reporting.[1]

1. In addition to Post-Newsweek Stations, Florida, Inc. ("Post-Newsweek"), licensee of WPLG, Miami and WJXT, Jacksonville, the petitioner in the proceedings leading to the adoption of the Florida access rule, joining in this brief are: The Miami Herald Publishing Company, publisher of *The Miami Herald;* the Times Publishing Company, publisher of the *St. Petersburg Times;* the Florida Association of Broadcasters; Wometco Enterprises, Inc., licensee of WTVJ, Miami; Channel 9 of Orlando, licensee of WFTV, Orlando; Gaylord Broadcasting Company, licensee of WTVT, Tampa; Harte-Hanks Communications, Inc., licensee of WTLV, Jacksonville; Media General, Inc., licensee of WFLA-TV, Tampa; Palm Beach Newspapers, Inc., publishers of the *Palm Beach Post* and the *Palm Beach Times.*

The brief provides a description of the rule allowing camera and electronic journalism access to the courts of Florida, a history of how that rule was adopted and some of the details of the Florida experience.

This brief draws on the record in the rulemaking proceedings, *In re Petition of Post-Newsweek Stations, Florida, Inc.*, 370 So.2d 764 (Fla. 1979). (*"Petition of Post-Newsweek"*) to rebut statements made by appellants concerning that record.

SUMMARY OF ARGUMENT

The Florida rule of court which governed the appellants' trial allows camera and microphone access, for news-gathering purposes, under strict guidelines which regulate the type of equipment and its location. The amount of equipment is limited; all movement and distracting procedures are prohibited. Confidential communications are protected. The trial judge has authority to prevent access where any trial participant shows a harm which is qualitatively different from other types of news coverage.

In adopting this rule, the Florida Supreme Court proceeded with great care and deliberation, basing its decision upon a background of broad experience and specific evidence. Ultimately, the court approved a permanent rule, relying on the experience of other states, the extensive Florida experience with open executive and legislative proceedings, and on the direct experience with scores of proceedings within the State where access had been allowed.

The Florida experience, with access over a period now greater than two years, indicates that courtroom access improves news coverage and aids the judicial system. The communication to the public is more honest and

presents a more dignified view of the courts. Experience has shown that access by cameras and microphones actually enhances the decorum of the highly newsworthy trial. The improved coverage has served to increase public discussion and understanding of the legal system without adverse impact on the defendant's right to a fair trial.

The actual experience of the thousands of persons who have participated in trials in Florida where access has been allowed reveals no basis for rejecting the reasoned decision of the Florida Supreme Court. The judgment of the court should be affirmed.

ARGUMENT

I.

The Rule Allowing Access Operates to Protect the Interests of the Parties and the Public

The rule of access which governed the appellants' trial[2] allows camera and microphone access to court proceedings under strict rules. Anyone who has witnessed a speech, investiture or other public event at which camera crews have roamed at will may think that access to courts allows the presence of obtrusive camera teams, including an equipment carrier and a camera operator linked by cord, using intense lights and wandering throughout the courtroom. Under the Florida rule of court the reality is quite different.

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2. The same basic rule controls Florida proceedings now. The rule was reviewed after the experimental year and adhered to in a long, scholarly opinion, *Petition of Post-Newsweek*, 370 So.2d 764 (Fla. 1979). The Florida Supreme Court referenced and relied on that opinion on review of the present case. *Chandler v. State*, 376 So.2d 1157 (Fla. 1979).

First, the rule controls the equipment allowed and its use. In a trial court, no more than one camera for television news and one photographer for still pictures is permitted. Audio pickup from existing court installations is utilized where available.

When more than one news organization wishes to cover a trial, pooling arrangements, worked out by news organizations and *not* the court, are required.

The sound and light criteria are strict and "[n]o artificial lighting device of any kind shall be employed in connection with the television camera," 370 So.2d at 783.

Although the supreme court designates the standards for equipment, the order makes it the "affirmative duty of media personnel to demonstrate to the presiding judge adequately in advance of any proceeding that the equipment . . . meets the sound and light criteria . . .," 370 So.2d at 783.

There can be no movement. The chief judge of the circuit selects the locations for cameras and the rule limits movement by camera personnel. Further, the order requires that video tape recording equipment be "remote from the court facility." Film, videotape and lens can not be changed while the court is in session, 370 So.2d at 783, 794.

There is a specific rule protecting conferences between lawyers, lawyer-client communications and bench conferences, 370 So.2d at 784.

Finally, the trial judge is given authority over the proceedings to ensure that participants' rights are protected. Included in the *Petition of Post-Newsweek* proceeding is specific authority to exclude access and provide the trial

participants the opportunity to put on evidence of individual impact to show that access should be denied.[3]

The appellants do not suggest any flaw in the guidelines[4] nor any departure from these guidelines in their case.[5] Their position is that access may not be allowed under any rule because, it is contended, the mere presence of the camera causes a fundamental deprivation of due process. This position implicates a large number of proceedings where access is now allowed[6] and, indeed, implicates the present American Bar Association rule as well.[7]

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3. The *Post-Newsweek* opinion provides the following standard controlling exclusion:

> The presiding judge may exclude electronic media coverage of a particular participant only upon a finding that such coverage will have a substantial effect upon the particular individual which would be qualitatively different from coverage by other types of media. 370 So.2d at 779.

An appellate court has reversed a conviction for failure to allow the defendant a hearing to prove special injury, *Green v. State,* 377 So.2d 193 (Fla. 3d D.C.A. 1979).

4. Indeed, counsel for the appellants participated in the rule-making proceedings and he did not suggest different rules.

5. The appellants do refer to an incident at trial when the judge admonished a cameraman (Appellants' brief, page 7). The record does not reveal the nature of this incident and no harm is claimed to the defendants from it. The incident illustrates that Florida judges maintain order in their courts and do enforce the strict guidelines under which access is allowed.

6. Presumably, the same impact applies to all other proceedings where rights are determined and at which cameras and microphones are allowed on a regular basis. Local government councils, school boards, administrative agencies and legislative bodies which have allowed news cameras and microphones for many years are suspect under the appellants' theory, yet no inhibiting impact has ever been claimed.

7. The American Bar Association Code of Professional Responsibility, adopted at one time by most state courts, allows cameras and microphones in the courtroom for educational purposes and to make a judicial record, but not for news gathering purposes. The appellants' position thus threatens not only the longstanding practice in state and local government (see note 4, *supra*), but also the practice in courts where microphones or cameras are used for purposes of making a judicial record or for educational purposes. The appellants do not state whether such a use, sanctioned by the American Bar Association and virtually every state, is claimed to constitute a per se violation of the defendants' rights.

Due to the strictness of Florida's access rule, it is apparent that the appellants must take an absolutist position in this case. Disorder and disrespect for the dignity of court proceedings are not tolerated in Florida. The appellants can obtain reversal only by convincing the Court that the mere presence of cameras and microphones inherently prejudiced the defendant's right to a fair trial.

II.

Florida Adopted a Rule Allowing Access Only After Lengthy and Deliberate Proceedings.

In both the jurisdictional statement and the brief on the merits, the appellants make sweeping derogatory statements about the motivations of the Florida courts and the techniques of decision employed by the Florida Supreme Court.[8]

The history of the Florida proceeding demonstrates the contrary—the Florida Supreme Court took great care with its decision and made that decision against a background of broad experience and specific evidence.

The Petition. The proceeding was initiated in January 1975, by petition filed directly with the Supreme Court of Florida. The petition suggested a change in the Code of Judicial Conduct through exercise of the court's constitutional authority to adopt rules governing the "prac-

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8. "[T]he Florida Supreme Court has cavalierly flirted with the possibility of irreparable damage to the most fundamental underpinnings of our criminal justice system." Appellants' Jurisdictional Statement at 14, *Noel Chandler and Robert Granger v. State of Florida,* No. 79-1260.

"The Florida Supreme Court authorized the televising of criminal trials without first assuring itself that no one's individual liberties would be impaired. *Post hoc* studies . . . reflects a total failure on the part of the Court to properly test and measure the reults of the experiment." Appellants' Brief at 12, *Noel Chandler and Robert Granger v. State of Florida,* No. 79-1260.

tice and procedure", FLA. CONST. Art. V, § 2. In April 1975, the court invited argument.[9]

Court's familiarity with modern electronic equipment. The petition was filed at a time when the Florida courts, like other contemporary institutions, were accustomed to the use of modern electronic equipment. Microphones and tape recorders were routinely used by court reporters and were permanently installed in many courtrooms.[10] Videotape equipment was coming into increased use for depositions in Florida[11] and the literature of judicial administration reflected other applications of the modern equipment such as the videotaped trial.[12]

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9. Notice of this and subsequent proceedings was widely circulated through official and unofficial means of communication including the *Florida Bar Journal*, the *Florida Bar News*, direct notice to lawyers' and judges' organizations and through regular news channels.

10. The Florida Supreme Court chambers have microphones and tape recording equipment. A rule allowing tape recording for the record in trial proceedings has also been adopted by the Florida Supreme Court. FLA. R. CT., JUD. ADMIN. 2.070.

11. There was authority that videotape depositions were proper and rules had been adopted by other jurisdictions. *See, e.g., Marlboro Products Corp. v. North American Philips Corp.*, 55 F.R.D. 487 (S.D.N.Y. 1972); *Colonial Times, Inc. v. Gasch*, 509 F.2d 517 (D.C. Cir. 1975); *United States v. LaFatch*, 382 F.Supp. 630 (N.D. Ohio 1974); *Matter of Daniels*, 69 F.R.D. 579 (N.D. Ga. 1975).

The courts assumed that the microphone and camera did not impact trial participants in any way significantly different from the impact of a court reporter or the already awesome court environment.

12. McCrystal, *Videotape: Relief for Our Congested Courts*, 49 DENVER L.J. 463 (1973); McCrystal and Young, *Pre-recorded Videotape Trials - an Ohio Innovation*, 39 BROOKLYN L. REV. 560 (1973).

There was also the experience of courts which had used television or other broadcast devices to transmit the trial proceedings to other audiences either in the courthouse where the courtroom was too crowded, or for educational purposes. Closed circuit television has been used in Michigan to transmit actual trials to a law school. Brennan, *Videotape - The Michigan Experience*, 24 HASTINGS L.J. 1, 2 (1972).

Thus, the question presented was not whether lawyers and witnesses would be exposed to cameras and microphones in court proceedings but, rather, the question of whether news could be collected with that equipment.

Experience of legislative and executive agencies. Public officials including members of the Florida Public Service Commission,[13] the Speaker and the former Speaker of the House of Representatives[14] and the Chairman of the Florida Pollution Control Board reported to the court on their experiences with camera access. Administrative and legislative proceedings in Florida are open to news cameras and microphones and these agencies resolve important issues. Decisions are routinely made which impact directly on freedom, property rights, taxation and other grave matters of public policy. In clemency proceedings, the Governor and Cabinet literally decide issues of life or death while other hearings, such as ratemaking proceedings for public utilities, involve many millions of dollars. No reports of adverse consequences to the administrative and legislative fact finding and decision making processes were received.[15]

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13. William Bevis, the immediate past chairman of the Public Service Commission, in his letter of February 18, 1975, wrote:

> Television cameras have not distracted our proceedings and the Chairman has been able to control the situation at all times.

14. For some years the Florida legislature has allowed television coverage and, during legislative sessions, there is a lengthy (one hour or more) program broadcast on public television each evening entitled "Today in the Legislature." Leroy, Watring and Lyle, *Today in the Legislature—The Florida Study*, 24 J. COMMUNICATION 92 (1974). In 1978 the Federal Congress began its experiments with direct electronic news coverage of its day-to-day proceedings. The house voted in 1978 to make this a permanent program. H.R. Res. 866, 95th Cong., 1st Sess. (1978).

15. Many local government proceedings have been broadcast for years and there are instances of very lengthy coverage on a routine basis.

(Continued on following page)

Judicial Comments. Endorsements for a change in the access rule also came from several Florida Circuit Court Judges including John Santora, who had experience with camera access during his legislative service and during his earlier service as a municipal court judge. A portion of Judge Santora's April 22, 1975 letter endorsing access reads as follows:

> From 1959-1970, I served as Municipal Judge for this city [Jacksonville]. Approximately two hundred fifty misdemeanants were tried each day, five days per week. In 1960 and 1964, we experienced severe racial riots and, as was the custom in those days, national as well as local television requested permission to film the proceedings. I granted permission . . . not only because I wanted the rest of America to see that the proceedings were conducted fairly and without prejudice but also to ensure local residents of the impartiality of the judiciary in disposing of what was then a very real and explosive issue.

Experience of courts in other states. Prior to allowing access, the Florida court was able to benefit from the activity of other courts, particularly those in Colorado, Washington, Alabama and Nevada.

Footnote continued—

For example, Don MacCullough, Director of Educational Media Programs for the Dade County school system, filed a statement with the court which told of broadcasts since 1972. He explained that, at approximately thirty meetings a year, each lasting from two to eight hours, as many as twenty to thirty speakers at a single meeting "present their views with little apparent concern that they are on television." Mr. MacCullough stated, "I do not know of an instance in which an individual who wanted to present ideas to the School Board hesitated to do so because of the television cameras." He concluded his statement as follows:

> From my perspective of more than twenty years in the audio-visual communication field, I believe that television cameras have become so commonplace that most children and adults are little concerned by their presence in a classroom, in the studio, or at a public meeting.

Colorado: The Colorado Supreme Court was the first court to actually conduct a hearing on the subject of camera and microphone access. The hearing convinced a skeptical justice that access was consistent with the right to a fair and orderly trial.[16]

Washington: On October 6, 1975, the Florida Supreme Court viewed the videotape of a Seattle, Washington criminal trial and the videotaped interviews of the trial participants which were done as a part of a Washington Supreme Court examination of the rule barring access. The court also received the report filed in the State of Washington which found that there was no disruption of the proceedings.[17]

Alabama: Alabama opened the subject of access in early 1975, at about the time that the Post-Newsweek petition had been filed in Florida. In December 1975, Chief Justice Howell Heflin[18] released the Alabama Supreme Court order adopting a Code of Professional Responsibility, which allowed coverage of trials by cameras and other instruments of electronic journalism under certain

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16. Justice Moore of the Colorado Supreme Court authored the opinion which allowed camera access in Colorado, *In re Hearings Concerning Canon 35*, 132 Colo. 591, 296 P.2d 465 (Colo. 1956). This opinion was based on the results of a court authorized proceeding to study camera access. Justice Moore admitted that he approached the proceedings with bias against such access, but was convinced by the study that such access was compatible with principles of fair trial and judicial decorum.

17. On July 24, 1976, the Chief Justice of Washington announced new rules, adopted after its study of the materials which had also been made a part of the record in the Florida proceeding. The Chief Justice noted that the decision to allow access was not based on a "snap judgment."

18. Chief Justice Heflin's conclusions about the Alabama rule allowing access are stated in his article entitled *Fair Trial v. Free Press: Time for a Rehearing?*, 61 JUDICATURE 154, 155 (October 1977).

conditions. The opinion relied, in part, on observations concerning the broadcast of church services.[19]

Nevada. In the summer of 1976, many public broadcasting stations across the nation aired a five hour documentary taken from sixty hours of videotape of a trial in Nevada.[20]

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19. These observations of the Alabama court are in line with Colorado Supreme Court Justice Otto Moore's statements in 1956:

> Has anyone been heard to complain that the employment of photographs, radio and television upon the solemn occasion of the last Presidential Inauguration or the Coronation of Elizabeth II was to satisfy an "idle curiosity"? Do we hear complaints that the employment of these modern devices of thought transmission in the pulpits of our great churches destroys the dignity of the service; that they degrade the pulpit or create misconceptions in the mind of the public; The answers are obvious. *That which is carried out with dignity will not become undignified because more people may be permitted to see and hear. In re Hearings Concerning Canon* 35, 296 P.2d at 469 (Emphasis supplied.)

The Florida court later received a statement from Father Donald Connolly, Coordinator of Community Relations, Archdiocese of Miami, who had experienced the televising of more than 4,000 religious services including several from the Vatican. He stated:

> It should be clear from the sketch of my activities above, that the Church is committed to the goal of reaching the widest possible audience. Televising is a service not only for those Catholics who cannot attend Mass in person, but just as important, it reaches non-Catholic viewers who are ignorant of Catholic theology and worship.
>
> The celebration of Mass is a solemn occasion. Attention is focused on the priest, on the liturgy of the missal or one's private prayers. *Any element which distracts the priest or worshippers would not be tolerated. In my experience I have never witnessed a Mass that has been disrupted or appeared an iota less solemn and dignified because of the presence of a camera.* (Emphasis added.)

20. Radio and Television News Directors Ass'n and Reporters Comm. for the Freedom of the Press, *Guide to Broadcasting From the Courtroom,* Nevada, (d) (1978). *See also,* Goldman, *News Cameras in the Courtroom During State v. Solorzano: End to Estes Mandate?* 10 S.W.U.L.Rev. 2001 (1978) (Sp. Nev. issue).

Case law revealed that no per se prohibition of access barred an access rule. The court was also able to determine that there was no *per se* constitutional impediment to camera access,[21] and that the *Estes* decision invited courts to allow access to this modern means of communication when technology and public acceptance reached a sufficient level.[22]

Experimental Access Allowed. Drawing on the experience in Florida with camera access at dispute resolution proceedings and on the experience of other states with news gathering by cameras and microphones in the courts, the court decided to institute a program of experimental access in Florida.[23] The process of information gathering

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21. In addition to *Estes v. Texas,* 381 U.S. 532 (1965), the Florida court received briefing on post-*Estes* cases including *Gonzalez v. People,* 165 Colo. 322, 438 P.2d 686 (1968), *Bell v. Patterson,* 279 F.Supp. 760 (D. Colo. 1968), *aff'd,* 402 F.2d 394 (10th Cir. 1968) and *Bradley v. Texas,* 470 F.2d 785 (5th Cir. 1972).

22. The plurality opinion in *Estes,* authored fifteen years ago, stated:

> It is said that the ever-advancing techniques of public communication and the adjustment of the public to its presence may bring about a change in the effect of telecasting upon the fairness of criminal trials. *But we are not dealing here with future developments in the field of electronics. Estes,* 381 U.S. at 551-552. (Emphasis supplied.)

Justice Stewart authored a dissent, joined by Justices Black, Brennan and White which touched on the same point:

> [I]t is important to remember that we move in an area touching the realm of free communication, and for that reason, if for no other, I would be wary of imposing any per se rule which, *in the light of future technology,* might serve to stifle or abridge true First Amendment rights. *Estes,* 381 U.S. at 604. (Emphasis supplied.)

23. The appellants make much of the fact that the court met with a "total failure" to arrange for trials as part of the first approach to experimentation which required consents. The fact is that, where *advance* consents of all parties, witnesses and jurors must be obtained, a major obstacle to coverage is presented. In several instances consents were obtained and trials were scheduled in Tallahassee, in Gainesville and in Jacksonville but settlements, continuances and plea bargainings frustrated the coverage of these.

went forward,[24] and experience with the modern equipment covering public proceedings accumulated.[25]

On April 7, 1977, over two years after the petition was filed, the court decided to allow access for a one year period and invited suggestions for implementation of this access. Strict guidelines were adopted (see Point I) and the experimental year began under an access rule which is substantially identical to the final rule in use today.

The experimental year ended on June 30, 1978. Various media interests, including some amici, sought to extend the experimental year while the court was in the process of making its decision. The court denied these motions, terminating camera and microphone access during the period of evaluation.

Evaluation. Thereafter, for a period of approximately nine months, the court received and reviewed briefs, reports, letters of comment and studies. The court con-

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24. On January 16, 1976, a year after the Florida petition was filed and a month after the Alabama court had issued its ruling, the Florida court held the first in a series of conferences to discuss questions relating to camera coverage. In addition, several justices attended judicial conferences, bar meetings and other events where the topic was discussed.

On August 16, 1976, the Orange County Bar Association held a mock trial at which cameras were present.

On September 19, 1976, traffic court proceedings in Jacksonville were televised without problem.

On March 8, 1977, two members of the court made a detailed inquiry into the modern television equipment, checking to see that it was, as represented, noiseless and capable of operating without high intensity lights.

25. A series of legislative inquiries concerning official misconduct of state cabinet members and other officials also took place during this period in Florida. Impeachment inquiries were conducted under rules which allowed camera access and, like the earlier proceedings in the congressional Watergate hearings, the public was able to obtain direct information from televised reports.

ducted its own survey which has been partially treated in a lengthy portion of the appellants' brief.[26]

Prior to its decision, the Florida court was able to look at the substantial developments in other states which were reviewing and amending their rules governing camera and microphone access. The February 7, 1979 report of the National Center of State Courts reveals that five states had, at that time, adopted permanent access rules (they were Alabama, Colorado, Georgia, New Hampshire, Texas and Washington). Eleven states (including Florida) were involved with experiments and eight additional states were considering the issue.[27]

Decision. Following this review and evaluation, the court rendered its April 12, 1979 opinion, concluding the proceeding which had begun over four years earlier. A final rule was adopted which allowed cameras and electronic equipment to return to the courtroom on a permanent basis under the strict rules announced for the experimental year.

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26. Additionally, the justices were able to draw on their own experiences. During the experimental year, there were a number of occasions when appellate arguments were covered by camera and microphone. In its opinion, the court stated:

> From our own experience with electronic media coverage of oral arguments before this Court during the pilot program we found absolutely no adverse effect upon the participants' performance or the decorum of the proceeding. 370 So.2d at 769.

Justices also observed the trial courts. Indeed, Mr. Justice Adkins, an experienced trial judge before he became a supreme court justice, returned to the trial bench to preside at the highly publicized "Sandy Creek Murder Trial," in Panama City, Florida, which was covered by television, news photographers and radio. Public radio broadcast gavel-to-gavel coverage. Of course, all members of the court could see the routine news coverage of trials and make judgments about access from that source as well.

27. Reports from many of these states were available to the Florida Supreme Court prior to its decision. Other developments since the Florida decision are treated more fully in the amicus brief of the RTNDA filed in this case.

Although the court determined that access was not mandated under the First Amendment, access was allowed pursuant to the court's supervisory authority.[28]

The record of *Post-Newsweek* is extensive and demonstrates a commitment to a process of reasoned judgment. It supports the conclusion that the Florida court acted deliberately in approaching the access question and in reaching its decision. Some specifics of the Florida experience are detailed below in Point IV.

III.

The Rule Allowing Access Evolved As a Part of, and Reflects Florida's Special Commitment to Open Government

In adopting the rule allowing camera access the Florida Supreme Court indicated that "[t]he prime motivating consideration prompting our conclusion is this state's commitment to open government," *Petition of Post-Newsweek*, 370 So.2d at 780. The access rule is more easily understood in the context of the movement for open government which has occupied Floridians for two decades and which Floridians commonly believe to be essential to responsive and democratic government.

Florida government operates with an openness that may seem unusual to citizens of other parts of the country. Pride is taken from the fact that Florida's experiences and leaders have played a role in increased openness in other states and the federal system.[29]

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28. The Florida access rule is, however, consistent with the objectives of the First Amendment and the long-standing principles of open court proceedings reviewed recently by this Court in *Richmond Newspapers v. Virginia*, 48 U.S.L.W. 5008 (1980).

29. As Mr. Justice Harlan pointed out in *Estes*, one of the valued attributes of federalism is the opportunity for innovation through the diversity of experience of the fifty states and the

(Continued on following page)

Florida's "open meetings" or "Sunshine" law is one of the nation's most famous. Section 286.011, Florida Statutes, requires all meetings of state and local agencies, commissions and boards to be open to the public and this law has been generally regarded as playing a major role in the trend toward openness in government which has occurred throughout the country.[30]

Today, open meetings are generally accepted across the country and the principle of open government is no longer thought to be radical. However, at the time of enactment of the Florida Sunshine Law, and later the federal act,[31] fears much like those now expressed to camera coverage of trials were raised. Actual experience proved that, contrary to many critics' apprehension, echoed today in the debate over courtroom access, public meetings

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Footnote continued—

federal government. *Estes v. Texas*, 381 U.S. at 587. Such diversity was promoted by this Court in *Gertz v. Robert Welch, Inc.*, 418 U.S. 789 (1974). As in *Gertz*, this case presents an issue that can best be resolved through individual state efforts. See brief filed on behalf of the Conference of Chief Justices.

30. "Just a few years ago, many people thought there was something radical about the idea that public officials should give up some of their habitual secrecy and let the public and the press into the rooms where decisions are made. Then, starting with the passage of Florida's landmark "Sunshine" law, the concept of open administrative and legislative meetings began to gain momentum. Today 48 states have some kind of open meetings law and 35 state legislatures conduct their committee deliberations in public view." Washington Post, Oct. 29, 1975, § A, at 26, col. 1

31. Senator Lawton Chiles (D-Fla.), who, as a state legislator, participated in passage of the Florida law, was the sponsor of the Federal Sunshine Act, and other Floridians were also prominent in the debate leading to its passage. Senator Chiles conceded that during preliminary discussions regarding Florida's Sunshine law he had apprehensions similar to those being expressed by some people about camera access. He explained, however, that experience will also prove these fears to be groundless. *Hearings Before the Subcomm. on Reorganization, Research, and Internal Organizations of the Senate Comm. on Government Operations*, 93rd Cong., 2d Sess. 260 (1974).

did not impede candid discussion, encourage "showboating", or subject decision makers to unacceptable pressures.

In Florida, over a decade of open meetings at every level of government has allowed considerable experience with camera presence. Citizens expect to find cameras at meetings of administrative agencies, school boards, county commissions, city councils, legislative deliberations and events of public debate. There has been no indication that the presence of cameras has adversely affected the quality of deliberations or the degree of citizen participation.

Florida's concern for opening the processes of government goes beyond the public meetings law. Simultaneously with its enactment in 1967, Florida adopted a strong public records law which opens virtually all state, county and municipal records to inspection by any person, FLA. STAT., Ch. 119.[32]

The openness of Florida government extends to the judiciary. In 1976, the voters adopted a constitutional amendment which opens judicial discipline proceedings, FLA. CONST. Art. V, § 12(d). Moreover, Florida courts have refused to close courtrooms to the public, except in the most compelling of circumstances. *State ex rel. Miami Herald Publishing Co. v. McIntosh,* 340 So.2d 904 (Fla. 1977); *Miami Herald Publishing Co. v. State,* 363 So.2d 603 (Fla. 4th D.C.A. 1978); FLA.R.CT., APP. PROC. 9.100.

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32. Another area related to public access to governmental proceedings and records is the requirement concerning the public disclosure of personal and campaign finances by public officials. Again, Florida has been in the forefront in requiring comprehensive disclosure. In 1978, the electorate adopted the "Sunshine Amendment" to the state constitution which requires public disclosure of income and net worth of public officers as well as reports of all campaign contributions and expenditures. The "Sunshine Amendment" survived constitutional scrutiny in *Plante v. Gonzalez,* 575 F.2d 1119 (5th Cir. 1978), *cert. den.,* 439 U.S. 1129 (1979).

The judicial rule allowing camera access is a further step in opening Florida government. Floridians look back on other advances that seem commonplace today but which, at the time of adoption, were greeted with fears much like those now raised. This past experience, as well as the actual experience under the judicial rule, provides confidence that the fears are groundless and the benefits substantial.

IV.

The Florida Experience Demonstrates That Camera and Microphone Access Is Compatible With Principles of Fair Trial

In retrospect, it is not surprising that Florida citizens, lawyers and judges accepted the advent of televised trials without major problems. Nonetheless, there were many people who, at the beginning of the access experiment, anticipated problems which have not materialized.

In the pages remaining, the extensive Florida experience with actual courtroom coverage will be reviewed.

A. Courtroom Access Allows More Comprehensive and Higher Quality Coverage of Judicial Proceedings.

Courtroom access has resulted in improved news coverage of Florida's judiciary. For over two years, television and still cameras have had daily access to all state courts. The cases covered for broadcast number in the hundreds; the number of days on which cameras have televised trials in Florida courtrooms can be counted in the thousands.[33] The coverage has included civil and criminal trials, appellate proceedings, the routine as well as the

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33. Davis, *Television in the Courtroom*, 64 JUDICATURE 89 (Aug. 1980).

more sensational. On a typical day, at least in urban areas, the nightly news is likely to include scenes of courtroom activities.

While most of these proceedings would have been covered by the electronic media from outside the courtroom had access not been allowed,[34] the nature of the coverage has changed for the better.[35] Review of newsroom logs and the material aired reveals that news stories about courts have become longer and more detailed than those broadcast prior to access.[36]

The reason for the improved coverage is readily understood. Without access, trial coverage consisted of a reporter verbally summarizing the courtroom events accompanied by visual scenes of the undignified pursuit of defendants, witnesses, and attorneys down courthouse corridors or steps, or jurors disembarking from buses.

At its best, television trial reports, without benefit of courtroom access, features hastily drawn sketches of the trial participants. At its worst, it often consists of cam-

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34. Certain coverage of the court system would not have been possible without access. For example, during the experimental year, Post-Newsweek used the camera in the courts for a series on "The Peoples' Courts" which helped explain how those courts most often utilized by the public, such as traffic court, operate. The British Broadcasting Corporation (BBC) utilized camera access as an integral part of a thirteen part documentary entitled "Circuit Eleven, Miami," which was awarded honors as the most distinguished documentary series in Britain for 1978.

35. Following the experimental year, the Florida court reviewed statements of professional journalists concerning their perception of the impact of access on court reporting. These journalists were able to draw upon years of experience, including, in one instance, coverage of the Billie Sol Estes trial, in making their assessment. The statements of these journalists are included in the record of the *Post-Newsweek* proceeding now lodged with this Court.

36. During the evaluation following the experimental year, the Post-Newsweek stations reviewed their program logs and analyzed the coverage which had taken place, reporting the results to the Florida court.

eramen walking backwards down a crowded hallway taking pictures of other cameramen walking backwards and an occasional view of a bouncing microphone in front of a witness. Without access to the reality of the courtroom, the coverage is subjective and limited and news stories of courts often feature scenes of disorder.

In contrast, where cameras and microphones are allowed, the sights and sounds are those of the courtroom itself. The resulting image and sound are inherently honest. The reporter is freed to give background information and to provide perspective on the story. The public view of a judicial proceeding is that of an orderly courtroom.[37]

B. Television Has Served to Educate the Public and to Raise Important Questions About the Judicial System.

The experience in Florida is that very significant questions concerning public policy and the judicial system have been raised and vigorously debated following major televised trials. The *Zamora* trial, televised in the evening hours, attracted a large audience and brought to very active public debate such questions as violence on television ("intoxication by television" was Zamora's defense), the treatment of juveniles and the competence of counsel.[38] The

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37. This improvement benefits the perception of the judiciary and results in a better informed populace. Television has become a dominant medium of communications in contemporary society and the American public views television a major source of news. Television is also regarded by the public as the most believable news medium. *See e.g.*, Roper Organization, Inc., *Changing Public Attitudes Towards Television and Other Mass Media 1959-1976* (1977). Substantial information concerning public use and perception of television was considered by the Florida court and may be found in the *Post-Newsweek* record.

38. *See e.g., Zamora TV plea, a valid defense, Rubin testifies,* Miami News, Nov. 21, 1979, at 4, col. 1; *"TV-Insanity" Trial was a "Farce," Zamora Says,* Miami Herald, Nov. 8, 1979, § D, at 1, col. 1; *Zamora asks new trial, raps Rubin's defense,* Miami News, Nov. 8, 1979, § C, at 1, col. 4.

recent televised trial of black school superintendent Johnny Jones before an all white jury has led to significant questions concerning the use of preemptory challenges where there is a racial element to the trial.[39]

It is impossible to gauge the extent to which public debate would have occurred in the absence of camera and microphone access, but it is clear that this access allowed a different quality of debate. Those citizens who spoke and wrote about lawyer competency and the fairness of jury selection had in their comments the sense of personal witness from the experience of actually watching large portions of these trials.[40]

C. The Picture and Sounds of Court Proceedings Have Not Inflamed the Passions of the Community.

The appellants argue that television will somehow inflame the passions of the community against the defendants and, further, that television coverage of the recent "McDuffie" trial (in Tampa)[41] contributed to the May 1980

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39. In a subsequent trial related to the same events, the trial of school principal Solomon Barnes, the State Attorney agreed to start again on jury selection after the panel selected was entirely white. *See e.g., Jury Selection in Barnes trial will start over: Prosecution offers to explain challenges,* Miami News, July 11, 1980, § A, at 6, col. 1; *All-White jury for Barnes?: Prosecution denies charge of systematic exclusion,* Miami News, July 10, 1980, § A, at 5, col. 2.

40. *See e.g.,* Oglesby, *1-Race Juries Add to Injury,* Miami Herald, Apr. 28, 1980, § B, at 1, col. 1. ("I got the disturbing impression that jurors were selected only on the basis of color."); Whited, *Blacks Are Needed on Jones Trial Jury,* Miami Herald, Apr. 24, 1980, § C, at 1, col. 1. ("I recall that there were valid reasons for the prosecution to challenge those black jurors I happened to see."); Editorial, *Tragedy of Johnny Jones Touches Entire Community,* Miami Herald, May 2, 1980, § A, at 6, col. 1. ("Fortunately, Dade Countians had an unprecedented opportunity to judge for themselves whether racism was the seventh juror.")

41. McDuffie was a black citizen who died after being arrested and, allegedly, attacked by police officers.

riots in Miami. The charge has no predicate in either the record before the Court or the actual facts.

First, the grievances of a community do not depend on the source of news. In San Francisco, the trial of a man who shot a homosexual city official produced a result offensive to other members of the San Francisco homosexual community and a riot resulted.[42] In recent weeks, the nation has learned of another violent reaction to a jury verdict in Chattanooga, Tennessee.[43] There was no access allowed to cameras and microphones at these trials, yet the anger remained.

Second, access to the courtroom did not create the news event. Television stations would have covered the news of the "McDuffie" trial in detail as did newspapers, even had the cameras been barred from the courtroom.

Finally, it should be observed that the appellants' mention of this case contradicts another of appellants' points. The "passion of the community" was not inflamed by the television coverage in a way adverse to the police officer defendants in the "McDuffie" trial. Indeed, those defendants were found not guilty.

D. In Highly Publicized Trial Situations, Camera and Microphone Access Render the Trial Environment More Compatible With the High Standards of Justice.

The major criminal trial, deemed newsworthy for whatever reason, attracts scores, sometimes hundreds of

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42. *See e.g., San Francisco Tense as Violence Follows Murder Trial,* N.Y. Times, May 23, 1979, § A, at 1, col. 3. ("Homosexuals . . ., suggested that the verdict had sparked a violent response because members of the large homosexual community here had not achieved their civil rights peacefully." *Id.* at 18, col. 4.)

43. *See e.g., Firebombs Scorch Alton Park Area: Outbreak Follows Verdicts in Controversial Klan Trial,* Chattanooga Times, July 23, 1980, § A, at 1, col. 5; *Racial Unrest: Chattanooga blacks protesting Klan acquittals in 4 shootings,* Miami News, July 24, 1980, § A, at 7, col. 1.

journalists, whether or not cameras and microphones are allowed in the courtroom.

The Florida experience with major trials at which access has been allowed has demonstrated that highly newsworthy trials such as that of the juvenile, Ronnie Zamora, or mass murder suspect Theodore Bundy become more manageable when the cameras and microphones are allowed inside the courtroom.

Once the television signal is made available by modern videotape equipment, a number of potential distractions are removed from inside the courtroom. Rather than multiple sketch artists with their artists' paraphernalia, a single camera operator at a fixed location is stationed in accordance with the court directive. That cameraman is not allowed to change film or otherwise conduct any distracting activities during trial. The signal is fed to a remote facility where videotape recorders are maintained and where monitors are located.

Thus, the highly publicized trial remains highly publicized but the actual courtroom environment is much less crowded, much quieter and much less distracting for the trial participants.[44] Reducing the large number of people in the courtroom also decreases the number of people entering and leaving, taking seats, whispering, coughing, laughing and reacting to testimony.

The difference is apparent not only inside the courtroom but outside. Rather than the groups of newsmen

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44. With the trial of Theodore Bundy, for instance, the remote facility was located on the top floor of a courthouse several floors away from the actual trial and it was at this remote facility where most of the enormous press corps collected during the Bundy trial. Reporters who wished to call in a story, smoke a cigarette, work with a typewriter or discuss the case among themselves found it much more convenient to be at the remote facility than in the courtroom itself where strict standards of decorum were observed.

with cameras and microphones located on the steps of the courthouse or in the corridors, there is a single camera inside the courtroom. Rather than forcing news reporters covering a trial to get their pictures outside in a mob, the reporters obtain their stories inside the courtroom where an atmopshere of decorum prevails. The communication to the public is more honest and presents a proper image of court proceedings.

E. Surveys Demonstrate That Trial Participants Accept the Access Rule.

The Florida experiment provided an opportunity to study the reaction of trial participants to an access rule which allowed cameras and microphones to be used by news organizations. A number of surveys were conducted and reported to the court.[45]

A substantial portion of the appellants' brief (and those of amici) is devoted to an attack on one of these

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45. In addition to the survey conducted under the direction of the Florida Supreme Court, there was a survey conducted by the Conference of Circuit Judges which demonstrated that those judges who had experience with the camera access rule were favorable to camera access (36 positive, 29 negative and 37 neutral and, "the neutrals generally made favorable comments.") (*Post-Newsweek* docket sheet, July 21, 1978).

In the Strawn-FTU Survey, the answers ran in favor of cameras by 70% or more in all but one of the questions even though the survey technique polled judicial officers who had no experience with the access rule and who were antagonistic to it without any direct knowledge. (For instance, 55.6% of the circuit judges who experienced camera access favored it. Only 38.3% of those who had not had such experience were positive.) (*Post-Newsweek* docket sheet, July 21, 1978).

Judge Thomas E. Sholts of Palm Beach, who tried the Mark Herman case during the experimental year, conducted a survey of trial participants and, though Judge Sholts opposed the access rule, the survey was generally favorable to camera access.

There was also a survey of legal experts and chief judges of state supreme courts reported in the July 16, 1978 edition of *The Washington Post*. Twenty-eight of fifty state supreme court chief judges responded and the *Post* reported responses were favorable to increased access by a margin of 6-1.

studies, the survey conducted by the Florida Supreme Court following the experimental year. The attack is in two parts, first attempting to demonstrate that the survey was not scientific (Point IV, C. of Appellants' brief, pages 41-45) and then, arguing in reliance on the survey, suggesting that it supports appellants' contentions (Point IV (D), pages 52-68).

The appellants' attack attempts to create the impression that the survey was a very significant part of the court's evaluation technique and that it was relied on by the court as scientific. The court's opinion indicated, however, that the survey was conducted as an "aid" to the decision but that the court regarded it as "non-scientific." *Petition of Post-Newsweek,* 370 So.2d at 768 (Fla. 1979). The survey was but one of the sources of information available to the Florida court but, even though it is unscientific, it does support the Florida access rule. Mr. Justice Sundberg's opinion analyzes those results in detail, 370 So.2d at 768, 769, and reaches conclusions which are at great variance from the conclusions reached by the appellants. (Appellants' brief, pages 52-69.) The actual survey results do not support the many extravagant statements made by appellants.[46]

The petitioner, Post-Newsweek, objected to the survey by the court and argued that it so focused attention on

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46. The appellants' interpretation of the results is clouded with distortion particularly when several categories of responses (e.g. slightly, moderately, very and extremely) are grouped together as a "sum" percentage in order to support a particular conclusion. (Appellants' brief, pages 58-69.) This bunching of quantitatively different responses frustrates the survey's direct attempt to measure *degrees* of effect. The survey avoided a black and white, "yes-no" response format, and the appellants' argument distorts the result, substituting the appellants' answer for that actually given.

Another example of erroneous interpretation is appellants' conclusion that an invasion of appellants' constitutional rights is demonstrated by the fact that "only" 19.5% of the jurors and 20% of the witnesses were "not at all aware" of the electronic

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the cameras and microphones that responses would be similarly focused.[47] Thus, when courtroom distraction is discussed, a questionnaire which mentions cameras but not the judge's telephone, the bailiff's cough and the spectator's exit, runs the risk of producing a skewed answer.

To partially accommodate this objection, the survey included a few control questions. The answers to questions relating to newspaper coverage of a trial can be contrasted to questions relating to television or radio coverage to determine whether there are any significant differences in perception. For example, jurors were asked to evaluate the extent of their concern that, as a result of various types of coverage, people would know they were sitting on a particular jury and would try to influence their decision. The average response on a five point scale was 1.2 for newspaper coverage, 1.2 for radio coverage and 1.3 for photographic coverage.[48] (Questions 24a, 25a and 26a.) Witnesses were questioned about fear that someone would try to influence their testimony. The response was: newspaper coverage - 1.3, photographic - 1.32 and radio - 1.27.

Footnote continued—

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media's presence. (Appellants' brief, page 59.) "Awareness" and adverse effect are entirely different. "Awareness" of the camera, like awareness of the presence of the court reporter or the judge does not entitle the defendant to reversal.

The major portion of the actual survey results are included in the appendix submitted by the State.

47. The inequity of singling out camera and microphone access is demonstrated by the results of a phone survey conducted among 262 randomly selected Dade and Broward residents by WPLG, a Miami television station, and reported to the Florida Supreme Court. The question asked was:

> "During court trials, newspaper reporters are frequently on hand, along with artists sketching witnesses for TV news programs. Do you believe the presence of newspaper reporters and sketch artists affects the testimony of witnesses in a negative way?"

Approximately 29% responded affirmatively to this question.

48. The smale, a "modified Lickert scale," asked those questioned to respond to questions with response as follows: 1-Not at all, 2-Slightly, 3-Moderately, 4-Very and 5-Extremely.

The difference is not significant.[49] (Questions 24b, 25b and 26b.)

These statistics show that newspaper coverage of trials has an impact on the trial participants[50] not significantly different from that of other types of coverage allowed by the Florida access rule.[51]

Of course, the survey has weaknesses. It does not purport to address other comparisons which would be of interest. What difference in impact, for instance between sketch artists[52] and cameras? Between a micro-

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49. Trial participants were questioned about the effect of various type coverages on their desire to participate in a trial. (Questions 27-30.) The results can be understood from the following table of average response with a scale of "1" for "not at all" and "2" for "slightly."

	Televised Trial	Photographed Trial	Radio Coverage of Trial	Newspaper Coverage of Trial
Juror	1.3	1.3	1.2	1.2
Witness	1.63	1.55	1.45	1.5
Court Personnel	1.35	1.29	1.3	1.2
Attorney	1.74	1.6	1.5	1.6

50. The Florida Supreme Court did not survey trial judges, but relied on the survey of the Conference of Circuit Judges which produced less data, but similar results. That report concluded, "From the whole, I think Courts do not object to the use of cameras in the courtroom now that they have had some experience," 370 So.2d at 770.

51. No question was asked of attorneys or others about the impact of court reporters, League of Women Voters Court Watchers or other "outside" influences.

52. The appellants never address the subject of sketch artists. One technique to test the arguments on this issue is to substitute the words "sketch artist" (or "newspaper report") for "camera" in each statement made.

This is not to say that there are no differences but that the differences do not rise to dimensions significant for the argument now before the court. Some of the differences between cameras and sketch artists favor the camera. The distraction of a silent camera is far less than even a single sketch artist. In practice, as many as twelve or fifteen sketch artists have attended highly publicized trials in Florida.

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phone used by a court reporter and one used by a radio station?

The survey also does not attempt to measure the difference, if any, between the impact of, say, television coverage by multiple cameras on the courthouse steps or the halls of the courthouse from the impact of a single, silent, stationary camera in the courtroom.

These weaknesses do not, however, disqualify the study from use as an aid to the Florida court. Because that survey was but one of the tools used by the court in making its decision, we should accept it for what it is—an indication that trial participants who had experience with the access rule did not have significant objections to the access rule.[53]

CONCLUSION

The Florida Supreme Court put the news organizations which sought access to a rigorous test in a proceeding lasting over four years and involving extensive briefing and reports, surveys and hundreds of trials and thousands of participants. The court made its decision allowing access based on the largest amount of information ever accumulated on this subject.

Before its final decision was rendered, the Florida court was able to draw on the experience of other states

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Footnote continued—

The potential for distortion through sketches is also greater because sketch artists, at times, engage in caricature, emphasizing the large nose, the mustache or other prominent features of trial participants. Some examples of courtroom sketches were placed before the Florida court in its *Post-Newsweek* proceedings. Additional examples are available if the Court wishes to have the record supplemented.

53. Moreover, for each possible slight detriment identified there was a corresponding slight possible benefit recorded. For instance, the court personnel and attorneys felt that jurors were slightly more self-conscious but also slightly more attentive, 370 So.2d at 769.

which had allowed access but, more importantly, it was able to rely on the extensive Florida experience with open institutions, accessible to all news organizations and, finally, on the direct experience with the many trials at which access had been allowed.

Each day in most large Florida communities, the sights and sounds of trial proceedings are transmitted to the public. The coverage is regular, without negative impact, and it is routinely accepted by the people of Florida. The coverage has had positive benefits by making the sensational trial more manageable and by increasing public awareness of issues within the judicial system. Moreover, there has been no evidence of adverse impact on the jury's verdict, and thus no infringement on the defendant's right to a fair trial.

The Florida Supreme Court acted responsibly in accepting the petition and allowing news organizations to demonstrate that they could utilize the modern technology without adverse impact on the business of the courts.

The appellants advance no reason that the careful efforts of the Florida courts should be repudiated.

The decision of the Florida Supreme Court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, pursuant to Rule 28.3 of the Supreme Court Rules, a copy of the foregoing Brief of Amici Curiae was served by United States Mail this 15th day of August, 1980 upon the following: Joel Hirschhorn, Esquire, Hirschhorn & Freeman, P.A., 742 Northwest 12th Avenue, Miami, Florida 33136 and Jim Smith, Attorney General, Suite 820, 401 N.W. 2nd Avenue, Miami, Florida 33128.

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